

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

EVERETT JOHNSON,

Petitioner,

-vs-

TIMOTHY BRUNSMAN, Warden,

Respondent.

:

Case No. 3:10-cv-390

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

**ORDER DISSOLVING STAY, RESTORING CASE TO THE ACTIVE DOCKET, AND
FOR ANSWER**

This is an action pursuant to 28 U.S.C. §2254 for a writ of habeas corpus.

Upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, the Court found that it does not plainly appear from the face of the Petition and any exhibits attached thereto that the Petitioner is not entitled to relief in this Court. Respondent was therefore ordered to file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases.

As was permitted by the Order for Answer, Respondent filed a Motion to Dismiss for failure to exhaust state remedies (Doc. No. 7). *Sua sponte*, the Magistrate Judge stayed these proceedings pending exhaustion and found the Motion to Dismiss moot on that basis (Doc. No. 10).

The Ohio Supreme Court has now denied Petitioner's Motion for Delayed Appeal (Entry, Case No. 2011-0273, April 6, 2011). Accordingly,

1. The stay of proceedings is DISSOLVED;
2. The Clerk is ordered to restore this case to the active docket;

3. The Respondent shall file an answer conforming to the requirements of Rule 5 of the Rules Governing § 2254 Cases not later than May 1, 2011, and serve the same on Petitioner; and

4. Petitioner's reply shall be filed not later than twenty-four days after the answer is filed.

April 14, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge